4:Belo E-5 (1931-1939) 1949 OF7 Bali OF7

pattern of land ownership is, as a result of the most usual 7 621
village organization, or better, village feeling, that of the central compact 423
village divided into individual family house courts with gardens, and beyond the village outlying fields which are also worked by the individual families. The fields are passed down by heredity in the male line but may not be [928] alienated; they may not be bought by a foreigner or even by the member of an adjoining village. When a house court falls empty it is filled by members of the family, and there are almost always sons waiting to get a village site when the old people die off. Only if there is a family line which [925] comes to an end, an exceedingly rare occurrence, do the village site and the portion of the fields worked by the family come up for sale to outsiders. Land so held is called *petjatoe*. Two other types of holding are commonly spoken of, the *tetamian*, "inheritance land," and *labaan*, "temple land." *Tetamian* is the type customarily owned by members of the higher castes; it is generally passed on in the male line, too, but, in contrast to village lands, can be sold or mortgaged. The third sort, *labaan*, is land held in common by members of a temple group for the support of the temple and its priest. Very often these lands do not suffice for the prescribed offerings and the support of the priest (*pemangkoe*), and the deficit has to be made up by the temple members by carefully allotted contributions.

It is commonly said, and the feeling is certainly there, that all the land [776] in Bali belongs to the gods and that a man only is privileged to work the lands during his lifetime, "asking for rice," as the saying is. A new born child is said to have come to "ask for rice," and he is put through the [782] motions of obeisance to the gods, from whose world he is thought of as but recently arrived, in order to obtain their benevolence and goodwill, for himself and his family, in enjoying the fruits of the earth which they graciously allow him.

Religion. Since ancestors are merged with gods, there is no contradiction 769 to the Balinese in the hereditary system of land ownership and the phrasing of it as "belonging to the gods."

Indeed the theme of what is known as ancestor worship is the strongest part of the Balinese religion. It is the basis upon which their version of [778] Hinduism rests. Temples are sacred sites, walled enclosures containing many shrines, and the chief of these is to the Original Ancestor and his Consort (*Sanggah Kemoelan*, Shrine of the Beginning, which, the priest will tell you, is equivalent to Siva). In every house court is a family ancestral shrine, a tiny temple walled off from the rest of the house in its own enclosure, the holiest ground. Villages have as a rule three main temples, the Village Temple, the Temple of Death (sacred to the memory of the Dead Kings), and the Temple of Origin. The Temple of Death (*Poera Dalem*) is

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In this form of possession nothing actually remains of the higher right of the community; Van Vollenhoven explains this as follows: owing to the higher development of agriculture and more intensive work on the land, [359] there is a tendency to free land tenure from the bonds of the disposal right, especially from interference with cultivated land. Actually, on Bali in connection with the sawahs (the land on which the most work must be done) and on Atjeh for all cultivated land, the right of possession has been freed from the bonds of the disposal right.

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The same development was in process at the beginning of the century in the Kedoe Residency (Bagelèn district) on central Java. As time goes on, communal possession with permanent holdings is being treated like hereditary individual possession.

I [636]

On the other hand, emphasis on the dadal right of the dèsa under the influence of the European administration, especially at the time of the Cultuurstelsel [Cultivation System], whose aims it furthered, led to the development of communal possession with periodic redistribution. Not only for special reasons such as expropriation, natural catastrophes, etc., but every year or after a certain number of years, the land of the dèsa was redistributed. Thus the situation arose which is described as follows in the Eindrésumé (Vol. I, p. 66): "In most of the dèsa of Djapara, Rembang, Madioen, Kediri, Surabaja, and Pasoeroean, there is as a rule a new distribution annually, with the cultivators changing places; in some dèsa this happens every two or three years.

"When a whole new distribution, with the cultivators changing places, is undertaken, either because there has been an increase or decrease in the number of members or because it is done annually, it is a rule (with some exceptions, for instance, assignment by the dèsa chief or one of the members of the village administration, or distribution by mutual agreement) that all the holders of land, beginning with the village chief and the members of the village administration and through all the others, choose their plot according to a roster with a definite plan of rotation each year."

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12: Haar S-4 (1939) 1948 OB1 Indonesia OB1
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bers may prevent sale to an outsider by making an equal offer, which must be accepted.

The community pervasively exercises its right of disposal over permanent fields and orchards, for the most part, by an occasional recovery of such fields after the death of the proprietor. Such rights usually are reissued to a selected heir of the deceased (see p. 209) or, perhaps, to a villager, who must then be raised to the status of membership in the central or nuclear village. The community may also force a father to make way for his son when the latter marries. It may prevent a nuclear villager from getting more than one permanent field of normal size, in order to maintain an equitable opportunity among the villagers. It may also take back the land as a punishment for criminal misbehavior. It can do the same when the proprietor leaves the community, and then reissue it to someone else.

The central or communal authority may for various reasons become subject to intense pressure for the recapture and reissuance of fields. In Tnganan (Bali), for example, this has become a regular practice; and princely levies combined with government taxes have produced a like effect in the desa in Cheribon and Central Java. A regular and periodic distribution of cultivated fields has come to be widely accepted. The sugar industry here has an important interest in pushing this practice for the benefit of its plantations which lie close to communal fields. This system of regular redistribution gives all the villagers a chance to an equal share in the returns from the land. It may also persist of its own worth when regular redistribution works well because of unequal fertility of the different areas of the village land. Yet it almost always shows a natural tendency to disappear when the external pressures are removed. It has been noted in several places in Java, since the decline of the sugar industry there from 1933 on, that periodic distributions are passed by and the legal hold of individuals on the land has become stronger.

If village concern over the land declines, possession of more than one field by a person and the alienation of fields to outsiders ultimately becomes extensive. Then the community's right of disposal is throttled.[2] The last surviving traces are found in the power to withdraw a field from a miscreant, the reversion of fields on death without heirs, or on the departure of a title-holder to other places, and the cooperation of the chiefs in land transactions.

[2] The best known example of this can be seen in Kedu (Java).

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Then, too, the right of disposal over cultivated land does not al- 425
ways operate in the same manner. In some law-areas (*e.g.*, South 184
Tapanuli, Ambon, Bali and Java) it is possible to note three levels 626
of operation in some villages. First, the community right is strong- 428
est with regard to lands without an owner, which have reverted to 423
the village and then been reissued by the village to a new proprietor. That person's legal status for the time being permits no dealings in the land and is weak in resistance to village interference in his title; as, for instance, when it is desired to recapture the land for non-performance of communal services. Second, the right of disposal is also strong with respect to those lands which are original holdings of the villagers. So long as a male descendant holds the land of his family ancestors, he has a firm hold as a member of an original lineage within the village group. However, the village interest is on the alert against any change in the legal possession of those original lands. It admits of no alienation, no division among heirs, no combination with other fields. If a native villager dies without heirs the village appoints a new person to use those particular fields or orchards. This new proprietor will acquire a position similar to that of persons who have held such fields from of old. But that takes a good long time. Third, there may be fields or orchards in addition to those issued by the village. These are individually owned, and the community interest is weak; the proprietors may pawn or sell such lands; their reversion to the village is exceptional, and village interference with these lands is rare. In Java such lands are called "sawah jasa" (in contrast with the "sawah pekulen or gogolan"); on Ambon, "dusun pusaka" (in contrast with the "dati"). AM [423]

It is this variegated action of the village rights that is sometimes, and erroneously, called "mixed possession."

Residential land is occasionally handled differently under the communal right of disposal of a village than is cultivated land. Villages interfere more readily to create living space than they do to make workable fields available.

5. *The dual area of disposal.*—The dual area of disposal is encountered in two different ways. In the first and more exceptional instance, an inland village will possess its actual residential and food-producing area; and, in addition, it may hold a distant maritime area from which it derives its indispensible sea products and salt. The more common dual form, however, is that which occurs when a given area falls within the disposal powers of both a local village and the regional community in which that village lies. As a I 423 626

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riage remain personal debts. In South Sumatra, such possessions are called "harta pembujangan" (of the husband) and "harta penantian" (of the wife). In Bali, they are "guna kaya" of both the husband and wife.

But if acquired during the course of the marriage, such possessions usually become the joint property of the husband and wife. Yet there are circumstances under which property acquired during marriage becomes the personal property of one of the marriage partners. In Atjeh, for example, the income of the husband belongs to him personally, unless the wife has provided the family some material basis in the form of a residential compound or a garden, or unless she gave him subsistence on a journey. (Could this be a ratiocination on the part of the community against the law of Islam, which does not recognize her?) In West Java, for example, if at the time of marriage the wife was rich and the husband poor, the income during marriage goes to the woman personally. But among the priyayi class in Java, it seems to be assumed that the receipts of the husband are for him. Finally, the goods or money which were presented by her parents to the wife, in connection with her marriage (not in the form of partition, dowry, etc.), generally continue to belong to her, and usually remain her personal property. Where a marriage gift to the wife occurs among the marriage payments, such as the "jinamee" in Atjeh, the "hoko" among the Minahasa, and the "sunrang" in the largest part of South Celebes, that property or money remains the property of the wife. In like manner, the presents, which she receives from her future husband or from family members as a part of getting married remain her own property, for the most part. In Atjeh this is true only of the defloration present and the seventh-day present. But it holds for the penalty, which (in Borneo, for example) the one spouse has to pay to the other because of an offense.

3. *Marriage property held jointly by husband and wife.*—The rule that property acquired during marriage is held jointly by husband and wife is just as common as the rule premised above with respect to "asal" property, which remains the property of the kin group. Joint ownership forms an estate to which both husband and wife each have a claim, in part, in case of divorce. It is a great exception if there is no provision at all for such joint property. It is only among patrilineal local groups that the kin group property of the husband (in case of a bride-price marriage) or of the wife (in case of an adoptive marriage) leaves no room for building a joint estate.

when the testator has no children; his "barang asal" then goes back to his own extended family—lest it "get away"—while the household goods are taken by the surviving spouse. It has already been said that in some law-areas a strong family bond can also influence the inheritance of goods, which were acquired by the household (p. 190). Among the Toba-Bataks, lands which have been given as dowry to the daughter remain at the death of the woman with the husband and his family, it is true, but in such a way that for generations, the in-laws (boru) may not use it without consulting the wife's family (hula hula) and giving them a right of preference.

2. *Property of special value.*—The sacred objects in a family can be tied up with the status of the possessor; for example, the "kraton" goods of the "kasepuhan" in Cheribon go to whoever inherits the dignity of Sultan Sepuh. In the same way, a name can only be bequeathed to a qualified heir. It can also be said that the heir of that family property becomes the legal administrator.

3. *Household goods.*—Differences in inheritance as a result of household ties may arise when a second marriage occurs. The children of the first marriage inherit the goods acquired during that marriage; the children of the second marriage receive none of them (Borneo). In Muna in South Celebes it is said in this connection, that the property of the one house may not be taken over by the other; in other places in this law-area, there is an adat law maxim to the same effect. In Java, the practice of settlement is ordinarily used to overcome the difficulties of multiple marriage in similar cases. For instance, in case the children by a first marriage are already married and thus form no part of the household of the second marriage, at the death of their father, they do not inherit the goods acquired during the second marriage, at least not if they have already had their share of the household goods of the first marriage. However, they hold a claim to the "asal" goods of their father. If two wives of the same husband form separate households with their children, then the goods of the two households remain separate (p. 177). The more involved the relationships are in a particular case, the more the most acceptable solution has to be found for an arrangement; such solutions, however, are satisfactory only if based on accepted tradition rules.

4. *Communal property.*—The community's right of disposal sometimes prevents succession to agricultural lands by its internal action because at the death of a first class villager his landholdings

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(at least his regular holdings attached to the nuclear village) revert to the community by reason of the right of disposal, and are granted to a village member of lower rank, who is next in turn. If such land is in general given to an heir of the deceased, then there is an inheritance claim to succession to first class villager property. This rule runs counter to the operation of the right of disposal within the community whereby individual rights to fields are allowed only to a specified extent. That is to say (in some Javanese and some Balinese desas), the unit of private lands of the testator may not be added to a unit of ground-holding which is already in the possession of the heir, or on the other hand, it is equally impossible to split the plot of the testator in smaller units among the heirs. Prohibition of accumulation and of splitting up of the standard unit permitted by force of the right of disposal is thus the norm within which the internal operation of right of disposal finds expression. Numerous vague relationships can be created in this way as a result of the apparent support, for one reason or another, of the rule mentioned, while privately permitting all sorts of evasions of it. For example, the heir, who already has a first-class villager's field allows it to be entered in the name of his wife or his oldest son, and himself receives the field of his deceased father; or two brothers permit their father's field to stand in the name of the oldest, but act during their whole lives as if each had a right to half of it; the village authorities cooperate by entering the field in the name of the oldest son "c.s." (cum suis). This Latin phrase has come into use in many desas, but in the form of "séès."

The effect of the right of disposal outside the community conflicts with the law of succession in that it often prevents the inheritance of a nuclear village field by an heir not living in the village. Here also are transitional conditions: putting up a proxy for desa services, entering the land in the name of a member of the extended family, etc. In case of dispute, the decision must bring out the true facts of such a half-way condition.

5. *Designated property.*—The effect of the actual declaration of the parts of the property in the division of the estate does not take the form of a prohibition or a command, but of a preferred choice of method of division. It is unfortunate that the mechanical procedure in case of the unwillingness of one or more heirs to accept the expressed desires of the testator prevents the government judge from carrying out the provisions in that the whole estate is then sold

12: Haar S-4 (1939) 1948 OB1 Indonesia
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CHAPTER XII

THE TIME FACTOR IN ADAT LAW

BOTH THE LAWS controlling land and those dealing with the relations between persons in the adat are subject to the influence of the passage of time. It is possible to speak of a fixed term of years after which a law is established or abandoned only when the fixing of such a term is actually known to have taken place, either through desa legislation (Bali), by princely orders, by government influence or by legal decisions from princely or government judges. In the unwritten law of the communities, it is either the demonstrable changes in the condition of the land brought about by time, for instance, which is a factor, or the failure to recall the exact circumstances which took place "long ago," which make it impossible to consider alleged claims as valid, and against which the other party is secure.

Individual rights to land cannot be maintained against claims of members, which are rooted in community law. They are lost, if traces of cultivation have disappeared on the land and if the land has become overgrown by brush. Rights to trees growing wild are lost when a new growth of bark has covered the identifying signs. The option of the man who clears the forest can be lost through the disappearance or destruction of his no-trespassing sign. In case of personal application of the collective right of disposal, it can happen that a despotic chief establishes a short term, within which the individual rights lapse in case the land is abandoned. He does this so he can give them out again and get paid for doing it.

A. THE INDONESIAN CONCEPT

In various law-areas, there are native legal terms which reflect the meaning "too long ago" or "cloudy because of the passage of time and therefore past and gone"—"ranan kotor" (Karo-Batak), "prakara lama" (Toba-Batak), "kedaluwarsa" (Javanese). With respect to pledging land, it is acceptable, both in native jurisprudence (Batak lands, Gorontalo) and in the government law system, that by long postponement of redemption of the land, the giver of the pledge loses his right to it. According to adat law, however,